

Oñati Workshop 2015

Human Rights and Life Imprisonment

Organisers: Professor Dirk van Zyl Smit, Dr. Catherine Appleton, Miss Georgie Payne
(School of Law, University of Nottingham)

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Theme statement

The progressive abolition of the death penalty in many countries over the last 50 years has been heralded as one of liberal humanism's greatest successes. In the push to eradicate the death penalty, however, many penal reformers have chosen to accept and endorse the widespread use of life imprisonment as the other ultimate penalty without close scrutiny of its practical operation or its alignment with international human rights standards and the purposes and principles of sentencing. This workshop aims to bring together a number of leading international scholars to evaluate the imposition and implementation of life imprisonment around the world against evolving standards of decency and human rights.

Importantly, current knowledge about what life imprisonment means in practice is limited. One reason for this is because the definition of life imprisonment is complex and disputed. In some countries, 'life sentences' are imposed but all persons sentenced to life imprisonment ('lifers') are released after a fixed period, such as 25 years, if not before. Conversely, in other countries fixed-term sentences for periods of longer than a natural life are imposed without being formerly defined as life sentences. A further possibility is that convicted offenders are sometimes given indefinite preventive sentences that amount to life imprisonment. This may happen also in countries where life imprisonment is formally outlawed. Furthermore, with the rapid abolition of the death penalty, the sanction of life imprisonment is being imposed more often as the ultimate punishment for the most serious crimes, and yet no real attempt has been made to address the full human rights implications of a sentence that has a profound impact on those that are subject to it.

In recent times some important work has been done on the specific human rights questions raised by 'whole life' or 'life without parole' sentences, both in Europe (Van Zyl Smit 2010) and latterly in the United States of America (Ogletree and Sarat 2011). In both there have recently been some dramatic legal developments that have applied human rights principles to the release of lifers. In Europe, the Grand Chamber of the European Court of Human Rights ruled in July 2013 that all persons sentenced to life imprisonment including those subject to a so-called whole life order, must have a prospect of release and that there has to be a procedure in place for reviewing whether the continued enforcement of these sentences is justified (*Vinter and others v United Kingdom* 2013). The denial of all hope of release would amount to inhuman and degrading treatment that would infringe Article 3 of the European Convention on Human Rights. Similarly, the US Supreme Court ruled that life sentences without the prospect of parole imposed on children, under the age of 18 years, who are convicted of offences other than murder, are 'cruel and unusual' and thus infringe the Eighth Amendment of the US Constitution (*Graham v Florida* 560 US – (2010)). Subsequently, the Court also ruled that if such sentences are mandatory they

are also ‘cruel and unusual’ if imposed on such children who are convicted of murder (*Miller v Alabama* 567 US – (2012)).

Although these are very important developments, they raise further questions. In Europe we do not yet know what form of review is required. Nor is it clear what steps European countries with irreducible life sentences will take to implement the judgment of the European Court of Human Rights. In the US the Supreme Court has left untouched the position of nearly 50,000 adults currently being held on life without parole sentences (Nellis 2013). This is a crucial issue in a country where life without parole is seen by many as the only acceptable alternative to the death penalty. Other human rights issues relating to life imprisonment have emerged more indirectly. Case law has shown that countries tend to allow extradition of serious offenders who may face life sentences that do not meet standards that they would apply in their home jurisdictions (*Barbar Ahmad and others v the United Kingdom*, 2012; *German Federal Constitutional Court Decision* 6 July 2005, (2011), *R (on the application of Wellington) v. Secretary of State for the Home Department* 2008). Furthermore, there is evidence from bodies responsible for enforcing international treaties, such as the European Committee for the Prevention of Torture, that in many countries the conditions for lifers are particularly poor with no programmes that would enable prisoners to rehabilitate themselves. This is supported by evidence from countries outside Europe, collected, amongst others, by Penal Reform International, that lifers are often subject to punitive restrictions, and kept in conditions akin to solitary confinement for the first ten years of their sentence without any clear justification for doing so. There is wide divergence also on how they are treated during and after release from prison.

The organisers of the workshop are convinced that there is a need for research and reflection on the human rights implications of the imposition and implementation of the punishment of life imprisonment, both as an alternative to the death penalty and as a sanction in its own right. To this end, they aim to bring together a number of leading legal, socio-legal and criminological scholars, from different parts of the world for a two-day workshop at the Oñati International Institute for the Sociology of Law.

The main objective of the workshop is to examine the imposition and implementation of life imprisonment on a global scale from legal, sociological and human rights perspectives. Attention will be paid to new information on what is happening in practice around the world. Attention will also be given to jurisdictions where there is no life imprisonment, so that the desirability of life imprisonment *per se* can be considered.

References:

Nellis, A. (2013) *Life Goes On*. Washington D.C.: The Sentencing Project.

Ogletree, C. and A. Sarat (eds.), (2012) *Life without Parole: America’s New Death Penalty*, New York: New York University Press.

Van Zyl Smit, D. (2010) “Outlawing Irreducible Life Sentences – Europe on the Brink?” 23(1) *Federal Sentencing Reporter*, 39-48.